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 9 Attorneys for Defendant
 JPMORGAN CHASE BANK, N.A., for itself and as an acquirer of
 10 certain assets and liabilities of Washington Mutual Bank from the
 FDIC acting as receiver

11
 12 **UNITED STATES DISTRICT COURT,**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14
 15 CYNTHIA ROBERTS, an individual,
 16 Plaintiff

17 v.

18 WASHINGTON MUTUAL BANK FA, a
 Federal Savings Bank, organized and existing
 19 under the laws of the United States of America;
 JPMORGAN CHASE BANK, N.A., a national
 20 association, organized and existing under the
 laws of the United States of America; and DOES
 21 1-10, inclusive,

22 Defendants.

23
 24 AND RELATED CROSS-ACTION

CASE NO.: C 09-1879 PVT
 (Consolidated with lead case C 09-1855 PVT)

Hon. Patricia V. Trumbull

**REPLY MEMORANDUM RE: NON-
 OPPOSITION TO JPMORGAN CHASE
 BANK, N.A.'S MOTION TO DISMISS
 PLAINTIFF'S COMPLAINT FOR
 FAILURE TO STATE A CLAIM**

DATE: September 14, 2010

TIME: 10:00 a.m.

CRTRM: 5

ACTION FILED: April 29, 2009

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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

Defendant JPMorgan Chase Bank, N.A., for itself and as an acquirer of certain assets and liabilities of Washington Mutual Bank from the FDIC acting as receiver ("JPMorgan"), respectfully submits this Reply Memorandum re: Non-Opposition to its Motion to Dismiss ("Motion to Dismiss") the Complaint of plaintiff Cynthia Roberts ("Plaintiff").¹

I. PLAINTIFF FAILED TO FILE ANY SUBSTANTIVE OPPOSITION TO THE MOTION TO DISMISS.

On June 10, 2010, this Court ordered after a lengthy stay of this case that "the motion to dismiss previously filed by Defendant JPMorgan Chase Bank, N.A. (docket no. 11 in consolidated case no. C09-1879 PVT) shall be heard at 10:00 a.m. on September 14, 2010." (*See* Docket No. 16, Case No. C09-1879 PVT, Order Granting Motion to Extend Time to Secure Counsel.) The Court further ordered that "[a]ny opposition to the motion shall be filed no later than August 31, 2010." (*Id.*)

Plaintiff did not timely file any substantive opposition to the motion to dismiss. On August 31, 2010, Plaintiff filed a document entitled "Motion for Order Referring Litigant to Federal Pro Bono Project and Plaintiff's Declaration in Support of and Staying in Proceedings and Answer Brief in Opposition of Motion to Dismiss Pending Appointment of Counsel." (*See* Docket No. 27, Case No. C09-1855 PVT.) While that document stated that Plaintiff "opposes defendant's motion to dismiss," it did not present any substantive opposition to the Motion to Dismiss. (*See id.* at ¶ 11.)

Instead, Plaintiff requested "a stay on the motion to dismiss" while Plaintiff continues to search for and retain willing counsel "to file an answer brief in opposition to the motion to dismiss." (*Id.*) However, the Court previously made clear that, "[a]bsent exigent circumstances, no further extension of the stay will be granted." (*See* Docket No. 16, Case No. C09-1879 PVT, Order Granting Motion to Extend Time to Secure Counsel.) Plaintiff has failed to present exigent circumstances. Rather, it appears that she simply continues to be unable to locate and retain willing

¹ This Reply Memorandum is being filed under Case No. C09-1855 PVT pursuant to the Court's Order Relating and Consolidating This Case With Case No. C 09-1879 HRL. (*See* Docket No. 5, Case No. C 09-1879 PVT.)

1 pro bono or contingency fee counsel, after approximately 7 months of searching for the same. (*See*
 2 Docket No. 23, Case No. C09-1855 PVT, Motion for an Extension of the Stay Order for 90 Days of
 3 in the Alternative an Order Referring Plaintiff to the Volunteer Legal Services Program Under the
 4 Pro Bono Project, Filed on February 5, 2010.) If Plaintiff has been searching for counsel as
 5 diligently as she represents without any apparent reason to believe that she is any closer to obtaining
 6 representation than she was 7 months ago, Plaintiff has presented no circumstances that would
 7 indicate that she will finally be successful in her quest if an additional stay is granted.

8 Therefore, Plaintiff should be required to proceed, with or without counsel, the Court should
 9 not consider any belated opposition from Plaintiff, and the Motion to Dismiss should be granted in
 10 its entirety without leave to amend.

11 **II. CONCLUSION**

12 Defendants respectfully request that the Motion to Dismiss be granted in its entirety without
 13 leave to amend.

14 DATED: September 7, 2010

ADORNO YOSS ALVARADO & SMITH
 A Professional Corporation

16 By: /s/ Patricio A. Marquez

17 THEODORE E. BACON
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 Attorneys for Defendant
 JPMORGAN CHASE BANK, N.A., for itself
 20 and as an acquirer of certain assets and
 21 liabilities of Washington Mutual Bank from the
 FDIC acting as receiver

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Roberts v. JPMorgan Chase Bank, et al.

USDC Case No.: C 09-1879 PVT

(Consolidated with lead case C 09-1855 PVT)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **ADORNO YOSS ALVARADO & SMITH, 633 W. Fifth Street, Suite 1100, Los Angeles, CA 90071.**

On September 7, 2010, I served the foregoing document described as **REPLY MEMORANDUM RE: NON-OPPOSITION TO JPMORGAN CHASE BANK, N.A.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY REGULAR MAIL** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS PRODUCED ON PAPER PURCHASED AS RECYCLED

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

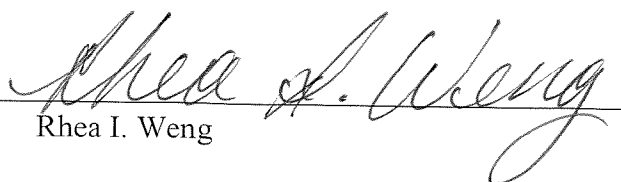
☒ **BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or FedEx Drop Box located at 633 W. Fifth Street, Los Angeles, California 90071. The envelope was deposited with delivery fees thereon fully prepaid.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

☐ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on September 7, 2010, at Los Angeles, California.


Rhea I. Weng

SERVICE LIST
Roberts v. JPMorgan Chase Bank, et al.
USDC Case No.: C 09-1879 PVT
(Consolidated with lead case C 09-1855 PVT)

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